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IN THE

**United States Court of Appeals  
For the Ninth Circuit**

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MAURICE M. WILLS and  
GERTRUDE E. WILLS,

*Appellants,*

v.

COMMISSIONER OF INTERNAL  
REVENUE,

*Appellee.*

No. 22,427



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ON APPEAL FROM THE JUDGMENT OF THE  
TAX COURT OF THE UNITED STATES

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BRIEF FOR THE APPELLANTS

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**FILED**

APR 24 1968

WM. B. LUCK, CLERK

Francis J. Butler  
BUTLER & LUKINS

Attorneys at Law

725 Lincoln Building  
Spokane, Washington 99201  
*Attorneys for the Appellants*



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Spokane, Washington 99201  
*Attorneys for the Appellants*



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**OPINION BELOW**

The Opinion of the Court below is reported at 48 T.C.,  
No. 30 (T. 43 through 59 incl.).

**JURISDICTION**

Pursuant to a statutory Notice of Deficiency dated  
March 7, 1966, asserting a deficiency in Federal Income

Tax for the taxable years 1962 and 1963 against the Appellants herein in the total amount of \$8,567, Appellants filed a Petition in the Tax Court of the United States on April 21, 1966 (R. 1). The Petition was answered by the Commissioner of Internal Revenue on June 13, 1966 (R. 14).

The case was heard before the Honorable William M. Fay in Seattle, Washington on the 30th day of November, 1966 (T. 1).\* The Tax Court entered its decision and served the same on June 14, 1967 (T. 43). The decision of the Tax Court was entered on July 26, 1967 (T. 65).

Appellants herein filed a timely Petition for Review of the Decision of the Tax Court on October 20, 1967 (T. 67). Appellants also filed a Statement of Points Relied Upon on October 20, 1967 (T. 73).

Jurisdiction is conferred upon this Court by Section 7482 (a) of the Internal Revenue Code of 1954.

### **QUESTIONS PRESENTED**

1. Whether Appellants' home for Federal Income Tax purposes during each of the taxable years 1962 and 1963, was in Spokane, Washington, or in Los Angeles, California, where Appellant, Maurice Wills, played baseball for the Los Angeles Dodgers during both said taxable years?

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\*All references to the Transcript on Appeal shall be cited as "T", while references to the official report of the proceedings before the Tax Court of the United States, i.e., Volume II of the Transcript of the Record shall be cited as "R".

2. Did Appellants receive taxable income on the alleged fair market value of the S. Rae Hickok belt which was awarded to Appellant Maury Wills as emblematic of his selection as Professional Athlete of the Year for 1962 or upon the fair market value of an M.G. automobile awarded to him in 1962?

## **STATUTES AND REGULATIONS INVOLVED**

The relevant statutory provisions applicable to this proceeding are set forth in Appendix A, infra.

## **STATEMENT**

The Appellants are husband and wife with their principal residence during the periods involved herein being located at 15414 East 36th Avenue, in the City of Veradale, State of Washington. The returns for the periods here involved were all timely filed with the District Director of Internal Revenue for the District of Washington, in Tacoma, Washington, and the tax shown as due thereon fully paid (T. pg. 1, 2, 14).

The Notice of Deficiency was mailed to petitioners on the 7th day of March, 1966 (T. pg. 7).

The deficiencies as determined by the Commissioner of Internal Revenue were in Federal Income taxes for the taxable years 1962 and 1963 in the total amount of \$8,567.00 (T. pg. 2).

The Federal Income Tax returns as filed by the Appellants for the taxable years 1962 and 1963 were filed on the cash basis of accounting. On each of the said returns as

filed, Appellants declared Veradale, Washington, as their home and listed Appellant Maury Wills occupation as professional baseball player. Appellant Maury Wills, will sometimes, for the sake of convenience, be referred to as either "Appellant" or "Wills" (T. pg. 31, para. 2). On the 1962 Federal Income Tax Return as filed Appellant Maury Wills claimed travel expenses for meals and lodging for 87 days in Los Angeles. On the tax return filed for 1963, petitioner Maury Wills claimed meals and lodging while in Los Angeles for a total of 87 days (Exs. 1-A, 2-B).

The 1962 and 1963 baseball contracts signed by Wills and the Dodgers listed Will's home address as Spokane, Washington. Under the terms in each of the contracts, Wills agreed to perform in a loyal manner, to promote the welfare of baseball, to allow his picture to be taken and to make public appearances. In addition, Wills agreed to maintain himself in top physical condition, that he would not play baseball for anyone else. The Dodgers could terminate the contract if Wills failed, refused or neglected to be a good citizen; failed to exhibit sufficient skills to qualify as a member of the team or failed to render service to the club. Wills also had to comply with the Regulations of the National Baseball League. The Regulations provide that the club would pay necessary travel expenses of the player to his home at the end of the season (Exs. 3-C and 4-D).

Maury Wills started his professional baseball career in 1951 with Hornell, New York. During the 1959 baseball season, Wills played 48 games for Spokane, Washington, in the Pacific Coast League, a Dodger AAA farm club. Wills

was "called-up" during the 1959 season (June), played 83 games with the Los Angeles Dodgers, hit .260, played in all six games of the 1959 World Series and hit .250. The following is a yearly breakdown of Maury Wills baseball career from 1951 through 1964:

Year	Club	G	AB	R	H	2B	3B	HR	RBI	SB	PCT.
1951	Hornell, N.Y.	123	461	94	129	16	6	4	51	54	.280
1952	Hornell, N.Y.	125	533	108	160	34	4	4	58	54	.300
1953	Pueblo, Colo.	18	63	17	18	2	0	0	8	8	.286
1953	Miami	93	343	71	98	16	5	6	31	20	.286
1954	Pueblo, Colo.	145	552	89	154	17	10	6	53	28	.279
1955	Fort Worth	123	326	44	66	11	0	7	39	12	.202
1956	Pueblo, Colo.	134	540	110	163	33	8	10	54	34	.302
1957	Seattle	147	491	67	131	23	6	0	33	21	.267
1958	Spokane	144	534	69	135	20	7	2	37	25	.253
1959	Spokane	48	192	42	60	6	3	1	18	25	.313
1959	Los Angeles	83	242	27	63	5	2	0	7	7	.260
1960	Los Angeles	148	516	75	152	15	2	0	27	50	.295
1961	Los Angeles	148	613	105	173	12	10	1	31	35	.282
1962	Los Angeles	165	695	130	208	13	10	6	48	104	.299
1963	Los Angeles	134	527	83	159	19	3	0	34	40	.302
1964	Los Angeles	158	630	81	173	15	5	2	34	53	.275
Major Totals (6 yrs.)		836	3223	501	928	79	32	9	181	289	.288

#### World Series Record

1959	Los Angeles	6	20	2	5	0	0	0	1	1	.250
1963	Los Angeles	4	15	1	2	0	0	0	0	1	.133
World Series Totals		10	35	3	7	0	0	0	1	2	.200

(Stip. para 3, T. pg. 32).

In 1960, Wills played in 148 games for the Dodgers, had a .295 batting average, and led the Dodgers and the National League in stolen bases with 35. In 1962, Wills played in 165 games for the Dodgers, had a .299 batting average, stole 104 bases, and tied with three other ballplayers for the most triples hit in the National League. In 1962, Maury Wills also led the Dodgers in most games played (165), most times at bat (695), one time at bat short of an all-time record; most runs (130), a Dodger Club record; most singles (179), a Dodger Club record; and most stolen

bases (104). He was tied with teammate Willie Davis for most triples. Mr. Wills was unsuccessful in his attempts to steal bases a total of 13 times in 1962. He was the subject of leading magazine articles in *Life*, *Newsweek*, *Sports Illustrated*, and *Time* during the year 1962. Mr. Wills appeared in the July 1962 All-Star game as a pinch runner for Stan Musial. He stole second base and came home on a single. In the top of the eighth inning, Mr. Wills singled, stole third on a single and came home on a short foul fly catch. In 1962, Wills was voted the "Most Valuable Player" in the National League. Wills in 1962 was selected as "Washington State's Most Distinguished Citizen." Wills in 1962 was voted as "Player of the Game" in the All-Star game. In 1962, Maury Wills individually stole more bases than any other team in baseball. In 1962, he received the following additional awards:

- (a) Associated Press, "Athlete of the Year"
- (b) California, "Athlete of the Year"
- (c) Baseball Writers, "Athlete of the Year"
- (d) Sport Magazine, "Man of the Year"

In 1962, Wills, by playing in 165 games, established a record for the most games played in a single season by any ballplayer in the history of the game (Stip. para. T. 32, 33).

On October 3, 1962, during a Dodger home baseball game, Mr. Wills was awarded an MG automobile whose re-

tail value at that time was \$2,196. The wholesale value of such car was \$1,731. Mr. Wills retained the automobile and drove it until early in 1964, at which time he traded it in on another sports car and was allowed \$1,318.52 as a trade-in. Mr. Wills had no option of taking cash in lieu of the car. The automobile was awarded by the Millard Automobile Agency of Los Angeles, California. The automobile agency had had programs printed, one of which was given to each individual coming into the Dodger stadium for a game held several days prior to the award. On each program a provision was made for a vote for the "most popular Dodger." The programs were turned in at the conclusion of the game and the votes were then tabulated. Mr. Millard, of the Millard Agency, made the presentation of the automobile to Mr. Wills. Wills was not required to perform subsequent services to the Millard Agency and was selected without any action on his part. (Stip. para. 5, T. 33, 34).

Following the 1962 season, Milton Berle developed a routine for a nightclub act with Maury Wills and five other Dodgers. The group appeared in Las Vegas in 1962 and 1963 and at Miami Beach, Florida, in 1963. It was made up of Don Drysdale, Sandy Koufax, Duke Snider, Frank Howard and Willie Davis. Mr. Wills received a total of \$18,000 in 1963 from the Las Vegas engagements, and a total of \$1,400 in 1963 from the Miami, Florida, engagement (Stip. para. 6, T. 34).

In January of 1962, the Appellants purchased a personal residence in Veradale, Washington, on the outskirts of Spo-

kane, Washington. Appellants maintained such home during the years 1962 and 1963 and the Appellant Gertrude Wills and their five children resided there during such period of time. When Maury Wills was in Spokane, he also stayed at this residence. Maury Wills was located in the following places during 1962 and 1963 for the indicated period of time. The Veradale home has seven rooms and is located upon approximately three acres of land. Wills bought his first home in Spokane, Washington, in 1953 and kept that home as rental property until sold in 1965:

1962				
Dates	Location			Days
January 1	through February	27	Spokane, Washington	58
February 28	through April	8	Florida	39
April 9	through October	3	Baseball season	
October 4	through December	23	Spokane, Washington	80
December 24	through December	31	Las Vegas, Nevada	7

  

1963				
Dates	Location			Days
January 1	through January	22	Las Vegas, Nevada	21
January 23	through February	28	Spokane, Washington	36
March 1	through April	8	Florida	37
April 9	through October	10	Baseball season	
October 11	through November	12	Spokane, Washington	32
November 13	through December	2	Las Vegas, Nevada	19
December 3	through December	31	Spokane, Washington	28

(Stip. para. 7, T. 34, 35).

During the 1962 and 1963 regular baseball seasons Appellant Wills was in Los Angeles approximately one-half of the time since the team traveled to other National League cities to play baseball (Stip. para. 7, T. 34, Exs. 8-H, 9-I).

Mr. Wills spent a total of 138 days of the year 1962 in Spokane, Washington, and lived, during that time, at his Veradale, Washington, home. The Appellee allowed the

Appellants a deduction based on estimated expenses of Mr. Wills at \$7 a day while in the Spokane, Washington, area totaling \$966. (Stip. para. 8, T. 35).

Mr. Wills spent a total of 96 days of the year 1963 in Spokane, Washington, and lived, during that time, at his Veradale, Washington, home. The Appellee allowed the Appellants a deduction based on the estimated expenses of Mr. Wills of \$7 per day while in the Spokane, Washington, area totaling \$672. (Stip. para. 9, T. 35).

In 1962, the Appellants deducted \$2,205 as travel expenses attributable to Mr. Wills' presence in the Los Angeles, California, area. The total amount of this deduction was disallowed by the Appellee for 1962. In 1963, the Appellants deducted \$2,095 as travel expenses attributable to Mr. Wills' presence in the Los Angeles, California, area. The total amount of this deduction was disallowed by the Appellee for 1963. (Stip. para. 10, T. 35).

In 1963, Mr. Wills spent a total of 21 days in Los Angeles rehearsing for performances at the Desert Inn and Sahara Inn at Las Vegas, Nevada. The Appellants deducted \$315 in addition to the \$2,095 mentioned above. The total amount of this deduction was disallowed by the Appellee for 1963. (Stip. para. 11, T. 35, 36).

Maury Wills performed official duties for the Los Angeles Dodgers while in Spokane, Washington, in 1962 and 1963. (Stip. para. 12, T. 36).

In January 1963, Maury Wills received the S. Rae Hick-

ok belt which is awarded yearly to the outstanding professional athlete. Such award was made for Wills' activities in the year 1962. The Hickok belt is awarded by the Hickok Belt Company of Rochester, New York. Wills was not required to perform subsequent services to the Hickok Belt Company and was selected without any action on his part. (Stip. para. 13, T. 36).

The idea for the belt award was originally conceived by Murray Goodman after he had been approached by the sons of Mr. Rae Hickok, who wished to establish a memorial for their father. Goodman suggested that, as the Hickoks were in the belt manufacturing business, they might provide a jewel-studded belt which would be awarded to the outstanding professional athlete of the year. Accordingly, for each year since (1950 through 1965), a belt containing 27 one and one-half carat diamonds, a ruby (simulated), a sapphire stone (simulated), and a three and one-half pound gold belt buckle, has been awarded. The total cost of the belt to the Hickok Belt Company for the belt awarded Mr. Wills was \$6,038.19. (Ex. 5-E, Stip. para. 14, T. 36). but this is reduced by labor costs of \$321.56.

Since its inception, there have been sixteen winners of the Hickok belt. The winners and their principal professional sporting activity are:

1950	Phil Rizutto	Baseball
1951	Allie Reynolds	Baseball
1952	Rocky Marciano	Boxing
1953	Ben Hogan	Golf

1954	Willie Mays	Baseball
1955	Otto Graham	Football
1956	Mickey Mantle	Baseball
1957	Carmen Basilio	Boxing
1958	Bob Turley	Baseball
1959	Ingemar Johansson	Boxing
1960	Arnold Palmer	Golf
1961	Roger Maris	Baseball
1962	Maury Wills	Baseball
1963	Sandy Koufax	Baseball
1964	Jim Brown	Football
1965	Sandy Koufax	Baseball

The 1950 winner, Phil Rizzuto, was also named the American League's most valuable player in 1950 by the Baseball Writers Association; the 1952 winner, Rocky Marciano, won the heavyweight boxing championship of the world in September 1952; the 1953 winner, Ben Hogan, won the master's championship, the United States open championship, and the British open championship in 1953; the 1954 winner, Willie Mays was named the National League's most valuable player in 1954 by the Baseball Writers Association; the 1956 winner, Mickey Mantle, was named the American League's most valuable player for 1956 by the Baseball Writers Association, was the American League home run champion and the American League batting champion in 1956; the 1957 winner, Carmen Basilio, was both the welter-weight and the middleweight boxing champion of the world in 1957; the 1959 winner, Ingemar Johansson, won the heavyweight boxing championship of the world in that year; the 1960 winner, Arnold Palmer, won the United States

open golf championship and the master's championship in 1960; the 1961 winner, Roger Maris, was named the most valuable player of the American League of 1961 by the Baseball Writers Association, led the major league in home runs and broke the late Babe Ruth's record for most home runs in one season in 1961 with 61 home runs; the 1963 winner, Sandy Koufax, was named the most valuable player of the National League in 1963 by the Baseball Writers Association, and won the Cy Young award as major league pitcher of the year, also selected by the Baseball Writers Association. (Stip. para. 15, T. 36, 37, 38).

The final ballot for the 1962 voting on the Hickok award was sent to the judges from Murray Goodman. In the ballot the judges were instructed to consider not only performance but sportsmanship and value to a team or sport. (Stip. para. 16, T. 38, Ex. 6-F).

Nobel prizes are awarded yearly to "those who had most benefited mankind during the preceding year." Pulitzer prizes are awarded yearly for work done in journalism, letters and music. (Stip. para. 17, T. 38).

During the 1962 baseball season, the Los Angeles Dodgers played before 2,755,184 paying fans at home in Los Angeles and 1,593,665 paying fans while playing on the road. The Los Angeles Dodgers home attendance represented a new National League attendance record. The National League in 1962 smashed all attendance records attracting 11,360,159 paying fans. (Stip. para. 19, T. 38).

In all of the official Dodger Programs and publications from the year 1959 to the present, Maury Wills shows his residence as being located in Veradale, Washington (Stip. para. 21 T. pg. 39).

Appellant, Maury Wills, was born on the 2nd day of October, 1932, and lived his early years in Washington, D.C. His father was a Baptist minister. There were thirteen children in the family (Ex., pps. 15-16). At the conclusion of his high school career at Cardoza High School in the District of Columbia—where he was all city in three sports—Wills was offered nine football scholarships (Ex. 10-J, p. 17).

The S. Rae Hickok belt which Maury Wills won as emblematic of the professional athlete of the year 1962 — and which was presented to him in 1963 — has a buckle which is approximately 12-14 inches wide and weighs three and one-half pounds. The belt cannot be worn but is used by the athletes that have won it as a “trophy” (R. 21). The belt is presented in a mahogany case so that it can be displayed as a “trophy” (R. 27, Exs. 11-K, 12-L and 13-M). No recipient of the belt has ever melted the gold or sold the diamonds (R. 28).

The Hickok belt is emblematic of the professional athlete of the year. The belt was designed to be a significant award and was made valuable because it is a prestige award. It was felt that in honoring the professional athlete of the year something besides a certificate of merit was required (R. 27). The belt itself contains no inscription

other than the athlete's name and its presentation is not exploited by the Hickok Manufacturing Company. Public exploitation of the belt has been toned down so that there would be no hint of commercialism and this in turn adds dignity to the award. (R. 22).

The Hickok belt is awarded at an annual sports banquet in Rochester, New York. It is not necessary that the athlete who is to receive the award attend the banquet, and at least on one occasion the recipient of the award was not present, but the belt was sent to him. (R. 20). It is the intention of the Hickok Manufacturing Company that the entire concept of the S. Rae Hickok award be kept in the families of the originators (R. 19).

Maury Wills kept the Hickok belt in his home in Spokane, Washington, but transferred it to Los Angeles when he thought this proceeding might be held in that city. (R. 32). In 1964 Mrs. Wills removed one diamond from the belt and made a ring for herself (R. 33). Wills has never exploited the belt or exhibited it in public. It is his intention that it remain with his other trophies in Spokane, Washington, since it now belongs to the entire Wills family (R. 64, 65, 56 to 57, 59).

During both the winter seasons of 1962 and 1963 Wills worked for the Dodgers in Spokane, Washington, helping promote their minor league team, the Spokane Indians. Wills was paid approximately \$5,000.00 a year for this work (R. 30, 31).

Maury Wills had a long and strenuous career in minor league baseball prior to his chance in what is commonly referred to as "big-time" (Ex. 10-J, pps. 32 to 38).

Baseball is the national pastime and is an art (Ex. 10-J, pps. 144 to 155).

Stealing bases is an art and requires many factors. Maury Wills has made a study of the art of base stealing (Ex. 10-J, pps. 83 to 90, R. 15, 33, 38, 24).

A baseball player is expected to conduct himself as a gentleman on and off the field. The public expects much of a baseball player since he is a great influence on the youth of America (R. 14, Ex. 10-J, 38 to 41).

Maury Wills attended many civic endeavors as a Dodger baseball player. In one of the taxable years here present (1963) Maury Wills spent two weeks in Germany on behalf of the Air Force to entertain troops (R. 59, 60, 65).

Wills refuses to endorse liquor, beer or cigarette signs because he thinks that it is bad for the youth of the country (R. 39 and 40).

Maury Wills has always considered Spokane, Washington, as his home (Ex. 10-J, pps. 97 to 102). His home is located in Spokane, Washington. He has joined a service club there and owns business property in Spokane, Washington (R. 43, 44, 60, 61). Wills children have always attended school in Spokane, Washington, and he maintains a bank account there. (R. 66).

While in Los Angeles Wills lived with the Rev. Charles, his minister (Ex. 10-J, pps. 22 to 25, R. 31, 62 and 63).

Wills did not join service clubs in Los Angeles (R. 64).

### **SPECIFICATION OF ERROR RELIED UPON**

A. The Tax Court erred in holding and deciding that Appellant Maurice M. Wills' tax home was in Los Angeles, California, while he was playing for the Los Angeles Dodgers baseball team, and not Spokane, Washington, where he maintained a year-round home for his family and where he resided during the off-season.

B. The Tax Court erred in holding and deciding that the fair market value of the Hickok belt awarded to Appellant, Maurice M. Wills, in 1963 as the "Outstanding Professional Athlete" constituted gross income to Appellant in 1963 and in deciding that the fair market value of an M.G. automobile awarded to Appellant, Maurice M. Wills, in 1962 as the "Most Popular Dodger" was taxable as gross income as an award and prize given in recognition of achievement.

### **SUMMARY OF ARGUMENT**

The Tax Court of the United States, in the instant proceeding, held that Appellants' home for Federal Income Tax purposes, during the tax years involved herein was located in Los Angeles, California, where he was a member of the Los Angeles Dodger baseball organization.

Appellants lived in Spokane, Washington, during the

taxable years 1962 and 1963. Appellant is a professional baseball player and sometime entertainer. As such, he travels each year to spring training and after spring training, plays baseball for the Los Angeles Dodgers, but is on the road with the Dodgers at least half the time playing baseball in other National League cities.

The facts in the instant proceeding are indeed unique. Appellants did not have their home in Los Angeles during either of the taxable years 1962 or 1963 and the Tax Court of the United States erred in holding that they did, thereby disallowing certain away-from-home expense deductions.

During the taxable years 1962 and 1963, Appellant, Maury Wills, received two awards, i.e., an M.G. automobile and the S. Rae Hickok belt symbolic of his selection as Professional Athlete of the Year. The Appellee taxed Appellant on the fair market value of the automobile and the belt. The Tax Court of the United States agreed with the Appellee that both items were taxable.

The Hickok belt is not taxable to the Appellant because it is a trophy. Trophies are not specifically referred to in the law as such, but the framers of the Statute on prizes and awards certainly didn't intend to tax an item which had not utilitarian function. The belt cannot be used and is only significant to its holder. Taxing the belt as the Tax Court has done would force most athletes to disassemble a trophy won to pay the tax.

The belt and the car are also excludable under Section

74(b) of the Internal Revenue Code as prizes and awards because they were given for artistic or civic achievement. The Tax Court of the United States was in error in holding the items taxable.

## ARGUMENT

### I

APPELLANTS' HOME FOR FEDERAL INCOME TAX PURPOSES DURING EACH OF THE TAXABLE YEARS 1962 AND 1963 WAS LOCATED IN SPOKANE, WASHINGTON.

The first question involved in this proceeding is whether expenditures made by the Appellants in 1962 and 1963 for travel, meals and lodging in Los Angeles, California were deductible as travel expenses under either Section 62(2) (B) or Section 162(a) (2) of the Internal Revenue Code. It is the Appellants' contention that the Tax Court erroneously held that the Appellants' home for Federal Income Tax purposes was in Los Angeles. Appellant is a professional baseball player and sometime entertainer. Both professions required travel during each of the taxable years 1962 and 1963. During each of said taxable years Maurice Wills was married and had five children.

Appellants made their permanent home in Spokane, Washington. They owned a home and the children all attended schools in the Spokane area during the years involved herein. Appellant, Maurice Wills, was a member of a Spokane civic club, maintained a bank account in Spokane, and was part owner of a motel in Spokane. Appellants did

not and do not intend to leave Spokane.

Appellant's work is indeed unique. As a baseball player he was under contract with the Los Angeles Dodgers. A baseball contract is the last vestige of "involuntary servitude" left in America today. The Dodgers could fire Appellant almost at will. Appellant, as a player, could do nothing about it. If he did, he would be through in baseball.

Appellant, Maury Wills, leaves for spring training in March of each year. The baseball season opens and extends through September. If lucky, the team might make the World Series. The National League's schedule is such that Appellant spends only one-half of his time in Los Angeles. The remainder of the time is spent on the road playing in other National League cities.

The Appellee in the Tax Court proceeding took the position that the Appellants' home for tax purposes during the taxable years involved, i.e., 1962 and 1963, was in Los Angeles, California.

The question presented herein is unique. The Tax Court in its Opinion noted that this was matter of first impression.

The question of "tax home" appears to have been undergoing widespread change. In *Wallace v. Commissioner* (C.A.-9, 1945) 144 F. 2d 407, this Court unequivocally stated that "home" as used in the statute should be given its ordinary and usual meaning. Since that time many things

have happened. Nothing, however, has happened which would overcome the basic uniqueness involved in the factual pattern presented herein.

Appellant was able to find only one case whose factual situation resembled the instant proceeding.

In *Patricia A. Ruby Hall v. Commissioner* (1964) T. C. Memo 1964-157, 23 T.C.M. 930<sup>\*</sup>, the Tax Court allowed deductions for travel expenses while away from home paid and incurred in connection with taxpayer's performance as a professional ice skater employed by the Ice Follies. In the *Hall* case, petitioner's home address was Spokane, Washington. She was employed as a professional ice skater in the Ice Follies by Shipstad and Johnson, which had its only office and place of business in Los Angeles, California. Shipstad and Johnson owned two buildings in Los Angeles where its plant and offices were located and where it employed a number of workers in addition to the individuals who actually performed in the Ice Follies.

Each year a new edition of the Ice Follies was produced and all rehearsals took place in Los Angeles prior to a three week premier of the new show. All contracts were executed in Los Angeles, pay-checks were issued there and all records were kept there.

Each year after the new edition of the show was presented in Los Angeles, the show went on tour over a regular circuit.

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<sup>\*</sup>Companion case *Judy L. Goodman*, T.C. Memo 1964-158.

There was a vacation lay-off of approximately six weeks, during which the petitioner was not paid wages. The Court in determining that Spokane was taxpayer's "tax" home noted that she had always lived in Spokane, that she continued to maintain her home there. The Court in allowing the entire away from home expense stated as follows:

The problem here lies within a narrow zone. We believe it closely resembles the situation which exists where an individual engages in a trade which necessitates his belonging to a union and accepting employment for short periods away from his home, city and area where he maintains a fixed and permanent residence.

In applying Section 62(2) and 162(a) (2) to various situations, there does not appear to be a single rule which will correctly fit every case and it is necessary to decide each case on its particular facts under general principles.

In summary: petitioner did not abandon her permanent home in Spokane at any time. She continuously contributed to its upkeep and maintenance. She intended to return to Spokane and to her permanent residence there, each year during the lay-off and at other times, whenever possible. That she would return to Spokane during the lay-off period was a part of the employment contract. She had a business home base in Spokane as well as her personal home for the relevant purposes of Section 62(2) and 162(a) (2). She was neither a homeless or an itinerant individual. Petitioner's employment by the Ice Follies was upon the condition that she would travel with the show wherever and whenever directed and it was known in advance that in each city the employment would be for temporary period. Petitioner could not move her residence to her places of employment, and on the other hand, she needed to have a home city for business purposes and

to maintain a home there to which she could return during the lay-offs without pay. She had no choice about the cities where she would perform and was under the constant supervision of her employer who imposed rigid disciplines. Under the particular facts of this case, we hold that the disputed expenses were away-from-home travel expenses.

The Tax Court, in its Opinion which is the subject of this Appeal, distinguished the *Hall* case. It is submitted that the distinction was erroneous. The Tax Court felt that the Ice Follies were not identified with Los Angeles and further that in *Hall* (and its companion case) the Taxpayer needed a home for business purposes. As applied in the instant case, it seems immaterial that identification with Los Angeles should be a crucial distinction. The identification of an activity, i.e., baseball, with a particular city seems insignificant on the question of away-from-home expenses.

Certainly, Maury Wills, with nothing but a National League contract, which could be broken at the whim of the owner, was in need of a home for business and tax purposes. He was in Los Angeles less than half the time. If the Tax Court felt that the Taxpayer in the *Hall* case had a home away from Los Angeles then certainly Maury Wills under the facts presented herein had a home in Spokane, Washington, during each of the taxable years 1962 and 1963.

The Tax Court in its Opinion relied heavily upon the decision of the Supreme Court in *Commissioner v. Flowers* (1946) 326 U.S. 465. The *Flowers*' decision under its particular facts would not seem to apply in the instant case. In *Flowers* the Taxpayer lived in one city and worked in an-

other. The Supreme Court held that by choosing to live at a distance from his place of employment the Taxpayer could not convert commuting and living expenses into business expenses since such expenditures would not be required by the "exigencies of the business" (T. 50).

In the instant case Maury Wills signs a baseball contract for one year. He goes to spring training. His career is completely in the hands of the owners of the baseball team. He can be fired, traded or sold at their whim. As a matter of fact, Maury Wills was traded to the Pittsburgh Pirates not a week after this case was heard before the Tax Court of the United States. His existence depends upon his physical artistry as a baseball player. He is in an entirely different classification than the Taxpayer in the *Flowers* case. The *Flowers* rationale should not control the instant case.

Under the unique facts here present, Appellant, Maury Wills, had to maintain a home base where he could return each year. This is a question of fact and Appellant submits that the facts involved in this case show definitely that Maury Wills' home for tax purposes during the taxable years 1962 and 1963 was located in Spokane, Washington, and that the deductions disallowed by the Appellee in his statutory Notice of Deficiency should not be allowed.

The Tax Court of the United States was erroneous in its holding that Appellant, Maury Wills' home for tax purposes during the said taxable years was located in Los Angeles, California.

## ARGUMENT

## II

**APPELLANT DID NOT RECEIVE TAXABLE INCOME IN 1962 UPON THE RECEIPT OF AN M.G. AUTOMOBILE NOR IN 1963 UPON RECEIPT OF THE S. RAE HICKOK BELT.**

In 1962 Maury Wills dazzled the baseball world. He stole 104 bases and broke a record held by the great Ty Cobb since 1915—a record that most baseball experts believed would never be bettered. The record itself culminated a long and strenuous career of a man gifted with speed, great desire and dedication. The record was a product of hard work and study. Maury Wills in a few short years changed the concept of baseball and drove the home-run hitter off the front page. Rewards were many.

Among the awards that Maury Wills received for his exploits in 1962 was an M.G. automobile and the S. Rae Hickok award (for purposes of convenience award hereinafter sometimes referred to as the "belt"). The belt was presented to Wills in Rochester, New York by the Hickok Manufacturing Company in 1963 for being the 1962 "Professional Athlete of the Year". The belt is a large diamond studded trophy which has become one of the truly coveted athletic awards in America.

The belt was the brainchild of Murray Goodman, a former New York sports columnist who turned to advertising and public relations. The Hickok brothers — extreme sports enthusiasts — wanted to honor their father with an award that

excelled. The idea put forth by Murray Goodman — i.e., the Hickok belt, symbolic of the professional athlete of the year, has honored Mr. Hickok beyond all expectations.

The Appellee asserted taxable income to Appellants based on the fair market value of the automobile and the belt.

The Appellant argued that both the automobile and the belt were non-taxable items. The Tax Court agreed with the Appellee that both the automobile and the belt were taxable.

Appellant contends that the Tax Court was in error. Appellants' first argument is that the belt is a "trophy" and as such, is not taxable. Appellant further contends that both the belt and the car are excluded from gross income for Federal Income Tax purposes under the provisions of Section 74 of the Internal Revenue Code of 1954.

The belt itself is large and cumbersome. It cannot be worn. The presentation of the belt takes place in Rochester, New York, but it is not mandatory that the recipient attend the banquet. The belt is presented to the winning athlete in a trophy case. None of the winners have ever sold the belt, but it has become a permanent and important part of their individual "trophy" collections.

The Hickok Manufacturing Company does not exploit the belt for publicity purposes. Nothing is done to detract in any way from the overall dignity of the award itself.

Section 74 of the Internal Revenue Code of 1954 entitled

“Prizes and Awards” is silent on the question of a trophy. The problem has apparently never been before the courts.

A holding for the Appellee in this proceeding will flood the Courts with new litigation. Admittedly, this trophy has value — but only to its recipient, Maury Wills. Most trophies have value. Certainly the winner of the “Oscar” presented by the Motion Picture Association of America to an actor or actress, if auctioned off, would bring a handsome sum. No such auction has ever taken place. Trophies are for the recipient to keep, to possess and cherish.

The belt has become a part of the Maury Wills family. It is owned jointly by them, as is every such trophy that has been presented to Wills over his baseball years. Taxing the same as income in the year of receipt would be stretching the tax law to an extreme.

The award is for good conduct in sports. It is a super award with dignity to the “Professional Athlete of the Year”.

Certainly the award should be taxed *if sold*. The recipient of the award has a zero basis and would receive income upon disposition of the belt. But taxing the belt upon receipt would force athletes to dismantle the trophy in order to pay the tax. This result would seem disastrous.

The Tax Court admitted the equitable position of the Appellants herein and recognized that the belt had no utilitarian value. The Tax Court, however—despite their solicitation for Appellant’s position — held that the fair Market

value of the belt and the car resulted in taxable income. The Tax Court erred in this holding.

Section 74 of the Internal Revenue Code of 1954 (Appendix "A") excludes certain prizes and awards from taxable income. To be excluded, the award must have been in recognition of religious, charitable, scientific, educational, *artistic*, literary or *civic* achievement. Admittedly, all of the elements of Section 74 are present in this case, but it was necessary in order that the exclusion come within Section 74 that the Appellant herein fit the Awards within the "*artistic* or *civic* achievement" categories.

It is Appellants' contention that both the belt and the automobile come within the exclusions of Section 74, above.

Baseball is the national pastime. It requires great skill. To attain the status of a Maury Wills one must necessarily be possessed of great artistic ability. The stealing of bases doesn't depend on brute strength. It depends on speed and knowledge. The Tax Court heard Appellant's explanation of the ingredients that go into stealing bases. The preparation is fantastic.

Wills is not only an artist, he has reconstructed a lost art and by so doing revolutionized the game of baseball which in 1962 and 1963 was witnessed by over 11,360,159 fans in the National League alone.

Who is to judge art? Who is to say a ballet dancer or a writer is an artist and Maury Wills with his special skills is not. It is submitted that the framers of Section 74, referred

to above, would not want this distinction made. The art practiced by Maury Wills had added something to the American way of life.

An additional exception contained in Section 74, above, is for "civic" achievement. Maury Wills spends the greater part of his living day engaged in civic activities. He is required under his contract to make public appearances on behalf of baseball and the Dodger organization. He signs autographs and endorsements. In 1963 the Air Force sent Mr. Wills to Germany for two weeks to entertain the troops. His life is one continual round of civic activities.

There is no more significant civic achievement throughout the United States today than the junior baseball program which in almost all instances is sponsored by local civic organizations. A great number of these future major league baseball players emulate Maury Wills. Wills is aware of this and because of his responsibility to the youth of America, has continually refused to endorse cigarette or liquor ads.

The Tax Court, in holding against the Appellants, as to the taxability of the belt and the car, relied upon their recent decision in *Paul V. Hornung* (1967) 47 T.C. 428. In that case a professional football player of considerable renown received an automobile in recognition of his having been selected the most valuable player in a National Football League championship game. The Court held that the receipt of the automobile did not come within the exclusion-

ary provisions of Section 74(b) of the Internal Revenue Code.

Appellants submit that the *Hornung* decision is incorrect. The Tax Court felt that the framers of Section 74 (b) meant to import everyday meaning into the words "artistic" and "civic". The skill required of a Maury Wills and his dedication to his public responsibilities would seem to fit very easily into the every day meaning of "artistic" and "civic".

Appellant, without attempting to take away credit from Mr. Hornung, argued in the Tax Court that Maury Wills' accomplishments over a whole year was distinguishable from Mr. Hornung's performance in one football game. The Tax Court felt that there was no distinction. Appellants submit that there is a distinction. Performance over a whole season and selection as the Professional Athlete of the Year augments the artistic exclusionary argument and multiplies by many the civic achievements accomplished by Mr. Wills during the period involved in this proceeding.

The car and the belt were within the exclusionary language of Section 74 (b) of the Internal Revenue Code and the Tax Court erred in holding that receipt of these items resulted in taxable income to the Appellants herein.

## CONCLUSION

The Judgment of the Tax Court of the United States should be reversed.

Respectfully Submitted:

Francis J. Butler  
BUTLER & LUKINS  
Attorneys at Law

725 Lincoln Building  
Spokane, Washington 99201  
*Attorneys for Appellants*

## CERTIFICATE

I certify that, in connection with the preparation of this Brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing Brief is in full compliance with those rules.

Dated: April 18, 1968.

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Francis J. Butler  
BUTLER & LUKINS  
725 Lincoln Building  
Spokane, Washington 99201  
*Attorneys for Appellants*

## APPENDIX "A"

## STATUTES INVOLVED

## Section 62, I.R.C. 1954

"For purposes of this subtitle, the term 'adjusted gross income' means, in the case of an individual, gross income minus the following deductions:

\* \* \*

"(2) Trade and business deductions of employees.—

\* \* \*

"(B) Expenses for travel away from home.—The deductions allowed by part VI (sec. 161 and the following) which consist of expenses of travel, meals, and lodging while away from home, paid or incurred by the taxpayer in connection with the performance by him of services as an employee."

## Section 74(b), I.R.C. 1954

"Exception.—Gross income does not include amounts received as prizes and awards made primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement, \* \* \* \* \*

## Section 162, I.R.C. 1954

"(a) In general.—There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including—

"(2) Traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business; \* \* \*

